

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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:
WILLIAM R. NOLAN, :
:
Plaintiff, : 19-CV-00187 (ILG)
:
v. : 225 Cadman Plaza East
:
THE CITY OF NEW YORK, *et al.*, : Brooklyn, New York
:
Defendants. : March 8, 2019
:
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TRANSCRIPT OF CIVIL CAUSE FOR MOTION HEARING
BEFORE THE HONORABLE STEVEN L. TISCIONE
UNITED STATES MAGISTRATE JUDGE

APPEARANCES:

For Plaintiff: THOMAS RUSSELL PRICE, ESQ.
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Proceedings recorded by electronic sound recording, transcript
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1 (Proceedings began at 2:01 p.m.)

2 THE COURT: Civil cause for motion hearing, 19-CV-
3 01187, Nolan v. City of New York, et al.

4 Counsel, please state your appearance for the
5 record.

6 MR. PRICE: Thomas Price of Borrelli & Associates
7 for plaintiff William Nolan.

8 MR. TROTTER: Darren Trotter, corporation counsel
9 for the City of New York.

10 THE COURT: All right. So tell me what's the
11 criminal case involves and why there's an overlap here.

12 MR. PRICE: Your Honor, the -- starting with the
13 civil case -- just to get to the overlap part, the civil case
14 raises out of the suspension and seizure of Mr. Nolan's
15 handgun license and handguns. Back in March of 2018, which
16 Kim is a result of his emailing certain executives in the
17 NYPD, fast-forward the criminal case involves a search warrant
18 that was executed on Mr. Nolan in December of 2018. And
19 during the course of executing that search warrant two
20 firearms and I believe two shotguns were found and two stun
21 guns. And that was essentially the -- to my understanding,
22 that's the charges that have been brought against him.

23 THE COURT: So he had firearms seized twice?

24 MR. PRICE: Yes. The first was under a suspension
25 notice, not as a result of a warrant; the second was the

1 result of a warrant.

2 THE COURT: And that's what the criminal charges
3 are?

4 MR. PRICE: That's what the criminal charges are
5 based upon, the warrant and the arrest in December.

6 THE COURT: Okay.

7 MR. PRICE: But the criminal charges from December
8 don't relate to the original suspension and the seizure of the
9 handguns.

10 THE COURT: Except to the extent that the suspension
11 allowed them to prosecute him for unlawful possession of
12 firearms?

13 MR. PRICE: There -- yes, to an extent except that
14 I'm not sure that -- there are different licenses in New York
15 City, so I'm not sure that the license that was originally
16 suspended, which was for handguns, whether or not that also
17 included the shotguns. So the -- their basis for going after
18 him for the shotguns I don't think has any direct bearing on
19 the original suspension.

20 THE COURT: Yeah, I have no idea about that. Is
21 there a separate license for shotguns?

22 MR. TROTTER: There are different classifications of
23 licenses. Obviously, plaintiff here had one of them. The
24 most comprehensive licenses that would cover [indiscernible]
25 cannot have, there is a license that permits just shotguns.

1 But Your Honor is correct. In a certain -- the reason to try
2 for criminal possession was because his licenses had been
3 suspended by the License Division and pursuant to that
4 suspension notice he was directed to turn over all of his
5 firearms for safekeeping to the NYPD. Obviously he did not
6 because nine months later when a search warrant was executed
7 at his home additional firearms [indiscernible] that would
8 have been -- so there was only one license that we had from
9 the NYPD. I was able to confirm that with counsel from the
10 License Division and that was one of the bases for charging
11 him with criminal possession because he had those guns
12 unlawfully because of our process for registering with the
13 NYPD.

14 THE COURT: But that license would have covered the
15 guns if they hadn't suspended it?

16 MR. TROTTER: It would have covered the guns. It
17 has come to my attention that they were never -- you have to
18 have the license and then you have to register the firearms.

19 THE COURT: Okay.

20 MR. TROTTER: Based on -- the firearms have to be
21 registered with the NYPD that are attached to the license. It
22 would appear that the high capacity magazines [indiscernible]
23 registered having been -- and again, I'm operating on limited
24 information because I can't prosecute -- the defendants having
25 been registered and were covered by that license

1 [indiscernible -- microphone not activated].

2 THE COURT: Okay.

3 MR. PRICE: I just want to make clear also, Your
4 Honor, we don't represent Mr. Nolan on the criminal side.

5 THE COURT: Sure.

6 MR. PRICE: The warrant in December was actually an
7 electronic warrant. They were going in looking for computers
8 and things along those lines for -- based upon allegations
9 that he was I guess making harassing communications.

10 So the warrant itself was not, you know, based upon
11 gun ownership or the suspension. That --

12 THE COURT: Okay.

13 MR. PRICE: -- that came sort of after the fact.

14 MR. TROTTER: And I do under -- I do -- I was aware
15 that the law was issued for --

16 THE COURT: Something else.

17 MR. TROTTER: -- [indiscernible]. However, you
18 know, that was a continuation of conduct --

19 THE COURT: Well, I'm sure.

20 MR. TROTTER: -- that ultimately gave rise to the
21 suspension. They were concerned about his behavior, that the
22 behavior continued in the form of alleged emails to members of
23 the NYPD that were of a harassing nature. That's what led --
24 you know, that behavior led to a suspension and then
25 ultimately because of [indiscernible] to obtaining a search

1 warrant this execution [indiscernible] additional firearms and
2 [indiscernible].

3 So it's a part of a larger factual arc that the
4 behavior that underlines the search warrant if you look at
5 things in isolation they may seem distinct but ultimately it's
6 all one time line that just kept going [indiscernible].

7 And I would also add that currently his weapons are
8 suspended [ph.] under the applicable rules. And revocation
9 hearing is not going to be held for criminal prosecution until
10 it is resolved. So the suspension doesn't represent the final
11 determination that's tied to the criminal prosecution or
12 ultimately will be out there [indiscernible] as a result of
13 that prosecution.

14 MR. PRICE: And I would just add, Your Honor, that
15 the statement that the suspension was based upon this
16 underlying conduct, there's nothing that we've seen that
17 suggests that we have this -- I have the suspension notice and
18 the letter, the cease-and-desist letter that was sent to
19 him -- to Mr. Nolan and it clearly references the
20 communications to Officer Spinella and Officer Reznick as the
21 basis.

22 [Indiscernible] and the dates, the suspension notice
23 is the date of the 14th and the cease-and-desist is on the
24 13th, but the cease-and-desist was actually handed to
25 Mr. Nolan by the License Division officers when they were

1 suspending and seizing his weapons. He has video of that
2 recorded, the interaction in his home.

3 [Pause in the proceedings.]

4 THE COURT: "Failure to notify the License Division
5 of numerous incidents which came to the attention of law
6 enforcement." What does that mean?

7 MR. PRICE: Well, that's part of the claim that the
8 law itself is a constitutionally -- or unconstitutionally
9 vague. Incidents within the License Division regulations
10 there are a number of specified incidents that can lead to a
11 suspension. But then 30(d) actually refers to situations
12 which is the only time that that word is actually used
13 anywhere in the statute or in -- sorry, in the rules. So it's
14 not clear. They say that it was an incident, but 30(d)
15 doesn't apply to incidents. It applies to situations which
16 could be literally anything since there's no use or definition
17 anywhere else in the statute.

18 THE COURT: Do you -- what are the numerous
19 incidents that you failed to notice by the License Division
20 about?

21 MR. TROTTER: So under the applicable rules anytime
22 you're involved in an incident or -- I understand the
23 vagueness of --

24 THE COURT: Um-hum.

25 MR. TROTTER: -- specifically that as a factual

1 matter, anytime you're involved in an incident sufficient that
2 comes to the attention of the NYPD you are obligated to report
3 that situation to officers. So if you're -- as you can glean
4 from the complaint there was a long history of alleged
5 harassment by individual complaints in his neighborhood and
6 all of those incidents came to the attention of the 121st
7 Precinct whether because individual Rodriguez contacted the
8 police [indiscernible] himself by reports of aggravated
9 harassment. So those would be the specific incidents that
10 were referred to in plaintiff's [indiscernible] that was
11 ever -- the License Division was never made aware of
12 complaints involved in all the criminal complaints that were
13 coming into the [indiscernible] involved in -- with the police
14 because of his ongoing feud with [indiscernible] Mr. Rodriguez
15 as identified in the complaint.

16 There were in excess of 15 reports filed with the
17 undercover police officer [ph.].

18 THE COURT: And is that what the emails or
19 communications were about?

20 MR. TROTTER: Yeah, that were -- plaintiff's counsel
21 was referring to in terms of [indiscernible]. Is that --

22 THE COURT: What's in the cease-and-desist demand.

23 MR. TROTTER: Oh, I -- the cease-and-desist was the
24 121st Precinct NYPD officers in the claims of Mr. Rodriguez's
25 aggregate [indiscernible] persistent that it would appear that

1 plaintiff's behavior and reportedly [indiscernible] officers
2 was [indiscernible] of harassment in and of itself. So there
3 was a cease-and-desist issue so he essentially stopped
4 commenting so [indiscernible] stop. And that's what gave rise
5 to the seizure of electronics from his home because there was
6 obviously [indiscernible] email that was it was time to
7 [inaudible].

8 THE COURT: Okay. So he was making complaints and
9 then essentially harassing -- as you allege are harassing
10 the --

11 MR. TROTTER: Yes.

12 THE COURT: -- officers to follow up on the
13 complaint, something along those lines?

14 MR. TROTTER: That is the allegation. Obviously
15 [indiscernible] accepted.

16 THE COURT: Okay. And what is the IAB investigation
17 into?

18 MR. TROTTER: So the IAB investigation and
19 ultimately the plaintiff concedes that multiple reports were
20 filed with IAB. So plaintiff is responsible for the
21 initiation of this IAB investigation that's ongoing because
22 the allegation -- the complaint was that, you know, there was
23 essentially dereliction of duty by officers at the 121st
24 Precinct and then plaintiff continued to take it up the chain
25 to different divisions.

1 So plaintiff would file complaints with IAB alleging
2 that officers were -- you know, ignored the various complaints
3 he was making about this individual and, you know, whether
4 investigating them as required. So because of those
5 complaints to IAB, IAB is looking to quote the officers that
6 were on the suspension. There was significant cross-over
7 because the officers plaintiff was making complaints to were
8 the ones that ultimately were the License Division to concerns
9 about plaintiff's fitness to carry a handgun license. So
10 that's essentially how it happened when it came about.

11 THE COURT: And are those the same officers involved
12 in the later search or are those a different set of officers?

13 MR. TROTTER: The officers -- I don't know who
14 exactly was involved in the later search because I'm limited
15 in terms of what I can access it, who I can speak to
16 [indiscernible].

17 My concern in requesting the stay is that we
18 can't -- for purposes of the IAB investigation we can't
19 represent them under [indiscernible] until disposition is
20 rendered in the IAB investigation. I can't speak to them
21 [indiscernible] and that's a concern because these five
22 officers and additional officers [indiscernible] subjects of
23 that IAB investigation which means the defendant was cleared
24 of wrongdoing. Then it became a criminal [indiscernible] to
25 also represent them [indiscernible].

1 THE COURT: Okay.

2 MR. TROTTER: [Inaudible]. That's the primary
3 concern with these ongoing -- both the criminal prosecution
4 and the IAB investigation of the issues that we -- issues that
5 we [indiscernible] which is why I haven't [inaudible].

6 THE COURT: So all of the officers were involved in
7 the -- all of the named defendants?

8 MR. TROTTER: Yes, they're all subjects of that
9 investigation.

10 THE COURT: How long has this investigation been
11 going on?

12 MR. TROTTER: I don't know how long the
13 investigation has been going on because IAB [indiscernible]
14 until it's closed. I do know that there were multiple IAB
15 investigations initiated because of the complaints by
16 plaintiff. Some of them are closed. There is -- you know,
17 there is an ongoing active investigation. The best I can do
18 to relate concerns about, you know, when it finishes as I
19 offered in my application to, you know, [indiscernible] status
20 of IAB investigation [inaudible].

21 [Pause in the proceedings.]

22 MR. PRICE: Your Honor, if I may add.

23 THE COURT: Um-hum.

24 MR. PRICE: In terms of the number of complaints I
25 would say that within the emails that we have it's clear that

1 he was constantly being told by members of the NYPD if this
2 keeps happening keep filing complaints. So there's a reason
3 that he was filing complaints. He was told to do that, to
4 call 9-1-1.

5 He started -- Mr. Nolan started filing complaints
6 with IAB once it became clear that the 121st Precinct for
7 whatever reason was not processing things. As a former NYPD
8 detective for 20 years and IAB undercover officer he knew what
9 was going on and they weren't processing anything. So he
10 tried to take it to IAB and when he saw that they weren't
11 doing what they should be doing, he went to the head of IAB.

12 And clearly in the cease-and-desist letter they
13 aren't saying that there's an issue with his mental
14 instability. If that was the case, they could have taken
15 other action and 530(d) wouldn't be the method.

16 It's just clear from the letter that they were
17 reacting to the emails, specifically to Spinella and Reznick.
18 And the idea now that they were concerned with his mental
19 stability or that that was the basis, one, just isn't
20 consistent with the written documents and, you know, it
21 doesn't provide an explanation for what they did.

22 [Pause in the proceedings.]

23 THE COURT: Well, I mean, I understand your concerns
24 about the propriety of an IAB investigation that is
25 essentially investigating itself. Notwithstanding that, there

1 are a number of named defendants who are currently being
2 investigated in connection with at least some of the
3 allegations in the complaint and that creates a lot of
4 logistical problems. You know, representation is obviously a
5 big one, but even if they did get their own lawyers it could
6 lead to a lot of other issues, too.

7 At the same time, you know, the pending criminal
8 case could lead to some problems for your client. You know,
9 just an example. I mean, if he's deposed in the civil case
10 it's going to be really hard to keep that from, you know,
11 either resulting in him claiming the Fifth Amendment or, you
12 know, resulting in potentially negative consequences to his
13 criminal case assuming it, you know, continues on. And as you
14 pointed out, you're not representing him in the criminal case
15 so you might necessarily be able to prevent that. I guess you
16 don't necessarily know.

17 I don't know how closely you're following it or
18 whatever, but you might not necessarily know exactly what
19 defenses are being raised in that case or how they plan to
20 prepare to defend that case. And it's always possible that
21 something in the discovery here could be used against him in
22 that criminal case, which is part of the reason why courts
23 typically stay civil cases when there's an overlapping
24 parallel criminal case. And I recognize that it's not a
25 direct parallel because it's not the exact -- it's not like

1 the -- the simple situation is when there's one incident and
2 that generates both the civil case and a criminal case.
3 That's clearly not this.

4 Clearly here there's a pattern of contact that
5 extended over a period of time and only some of that conduct
6 overlaps with the criminal case, but I think enough of it
7 overlaps that it's going to create problems.

8 MR. PRICE: Your Honor, if I may, obviously we've --
9 I've been in touch with his criminal defense attorney and
10 Mr. Nolan. We're certainly aware of those issues and his
11 criminal defense attorney would, you know, take part in or got
12 us as need be. Again, we don't -- we believe the issues here
13 are actually relatively narrow. The motivation behind the
14 letter and if, in fact, the letter was the basis for the
15 termination or the suspension of his license there's really
16 nothing else beyond that that establishes the issue.

17 Additionally, there's the parallel issue of just the
18 constitutionality of the statute which requires no input from
19 any of the defendants and -- you know, so that's something
20 that could at least be addressed in the near term.

21 THE COURT: Well, that's true.

22 MR. PRICE: The other --

23 THE COURT: It's purely a question of law. So
24 theoretically you don't need any discovery to address that.

25 MR. PRICE: Exactly, Your Honor. I would just say

1 also that the cases that deal with parallel proceedings are
2 primarily where defendants -- criminal defendants want to stop
3 a civil action to protect themselves. Here the defendant
4 fully aware of the Fifth Amendment implications is not
5 exercising that right. He prefers to go forward with a civil
6 action to uphold his constitutional rights.

7 THE COURT: I understand. That is typically the
8 posture, but not always. You know, if it was perhaps just the
9 criminal -- the pending criminal case and the plaintiff wanted
10 to proceed notwithstanding the potential problems it might
11 create for him in the criminal case, I might be inclined to
12 allow the case to go forward. But I think the outstanding
13 criminal case coupled with the outstanding IAB investigation
14 is going to make moving forward in this case virtually
15 impossible, even without a stay.

16 So what I'm going to do is issue a temporary stay on
17 discovery in this case. And I'm going to direct defense
18 counsel to provide the Court with an update on both the
19 pending criminal case and the IAB investigation in 60 days
20 because if one -- or obviously if both of those are resolved
21 then there's no issue, but if even one of those is resolved it
22 might be enough to move forward in the case.

23 [Pause in the proceedings.]

24 MR. PRICE: Your Honor, regarding the challenge to
25 the facial constitutionality of the statute is that something

1 that can proceed or at least after the six -- the initial 60
2 days we could proceed if --

3 THE COURT: Let's wait the 60 days because if we
4 could do it all at one time that'd be better. If it looks
5 like things are going to drag out longer and you want to
6 proceed with just the legal challenge, that might be something
7 that could at least advance part of the case. Since -- I
8 don't even -- defendants aren't saying that that needs any
9 discovery, right?

10 MR. TROTTER: No. I mean --

11 THE COURT: Yeah.

12 MR. TROTTER: -- [inaudible]. And, Your Honor, I
13 would just ask, we have not yet entered [indiscernible] for
14 any of the defendants.

15 THE COURT: Um-hum.

16 MR. TROTTER: So I would also add [indiscernible] --

17 THE COURT: Well, everything is stayed, so --

18 MR. TROTTER: Okay. So there are [indiscernible] as
19 well.

20 THE COURT: Um-hum.

21 MR. TROTTER: Okay.

22 THE COURT: Can't answer if you don't know whether
23 you represent them or not.

24 MR. TROTTER: No, I earlier I -- you had set
25 discovery so [inaudible], so thank you.

1 THE COURT: All right. So status report by May 8th.
2 And we'll see where we are at that point. Obviously if things
3 are resolved sooner than that let me know -- or let everyone
4 know as soon as things are resolved one way or the other.

5 Anything else?

6 MR. TROTTER: No, Your Honor.

7 MR. PRICE: No, Your Honor.

8 THE COURT: Okay. All right. Thank you. I look
9 forward to hearing from you in a few days.

10 (End of proceedings at 2:30 p.m.)

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1 I certify that the foregoing is a court transcript
2 from an electronic sound recording of the proceedings in the
3 above-entitled matter.

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7 Ruth Ann Hager, C.E.T.**D-641

8 Dated: July 17, 2019
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